Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

OGC 79-00135
4 January 1979

MEMORANDUM FOR : General Counsel

25X1 FROM : [redacted]

SUBJECT : Collection of Foreign Intelligence Concerning U.S. Persons - Comparison of S.2525 With, and Effect Upon, Present Practices and Procedures

OVERVIEW of CURRENT PRACTICE

1. You have requested an overview, in connection with the deliberations of the Administration's Intelligence Charter Legislation Task Force chaired by David Aaron, of present authorities, practices and procedures regarding the collection of foreign intelligence information concerning U.S. persons, the relevant provisions of S.2525, and the impact of S.2525 if enacted into law. As you suggested, I have treated electronic surveillance and physical searches separately and have subsumed all other techniques in the discussion of general collection authorities.

I. Electronic Surveillance

25X1

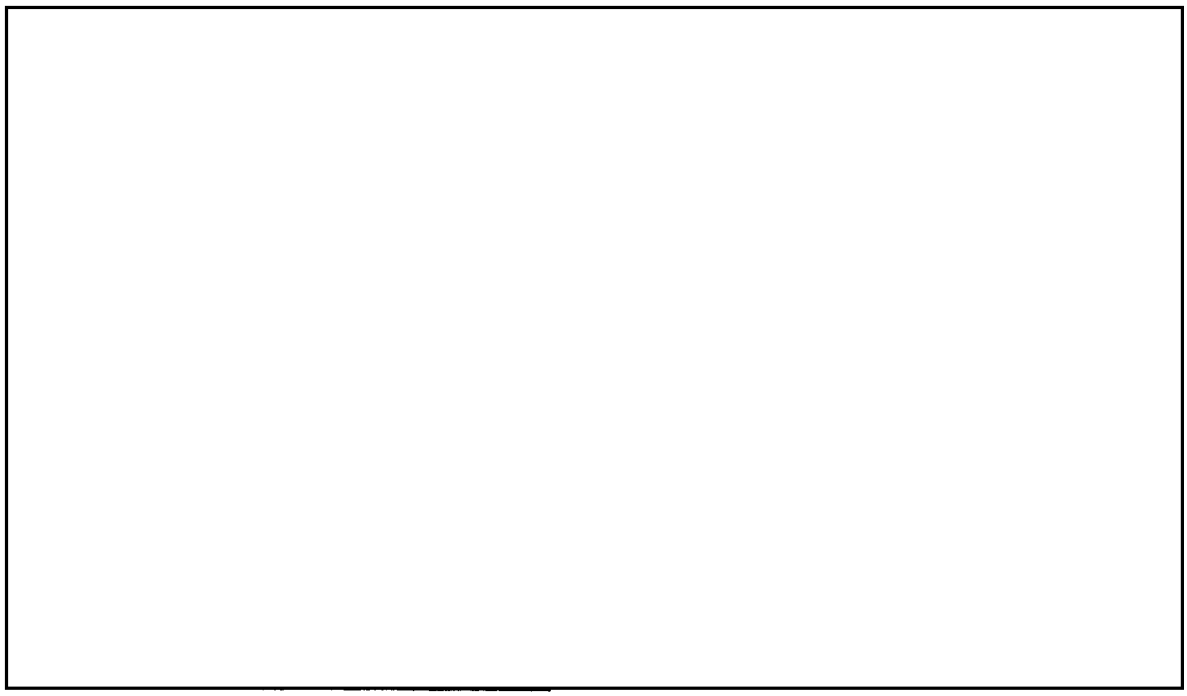
2. Within the United States:

[redacted]

25X1

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

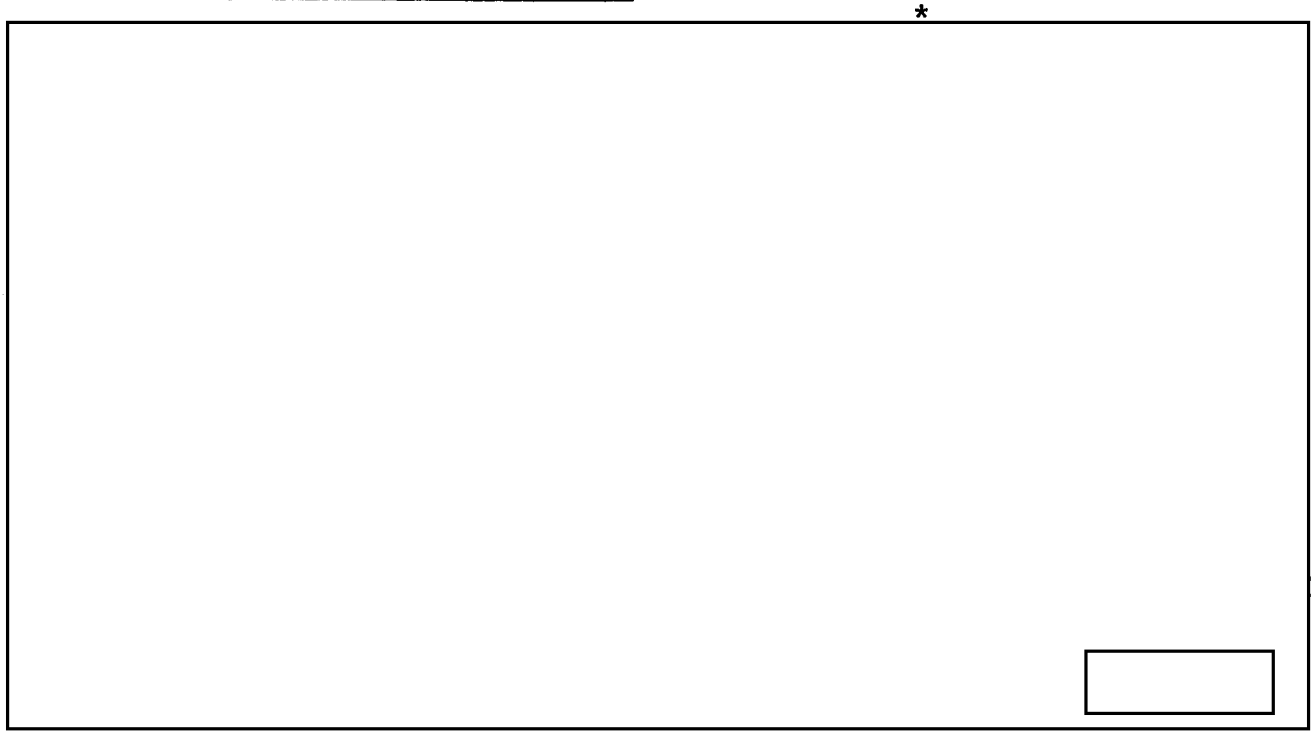
Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3



25X1

25X1

3. Outside the United States:*



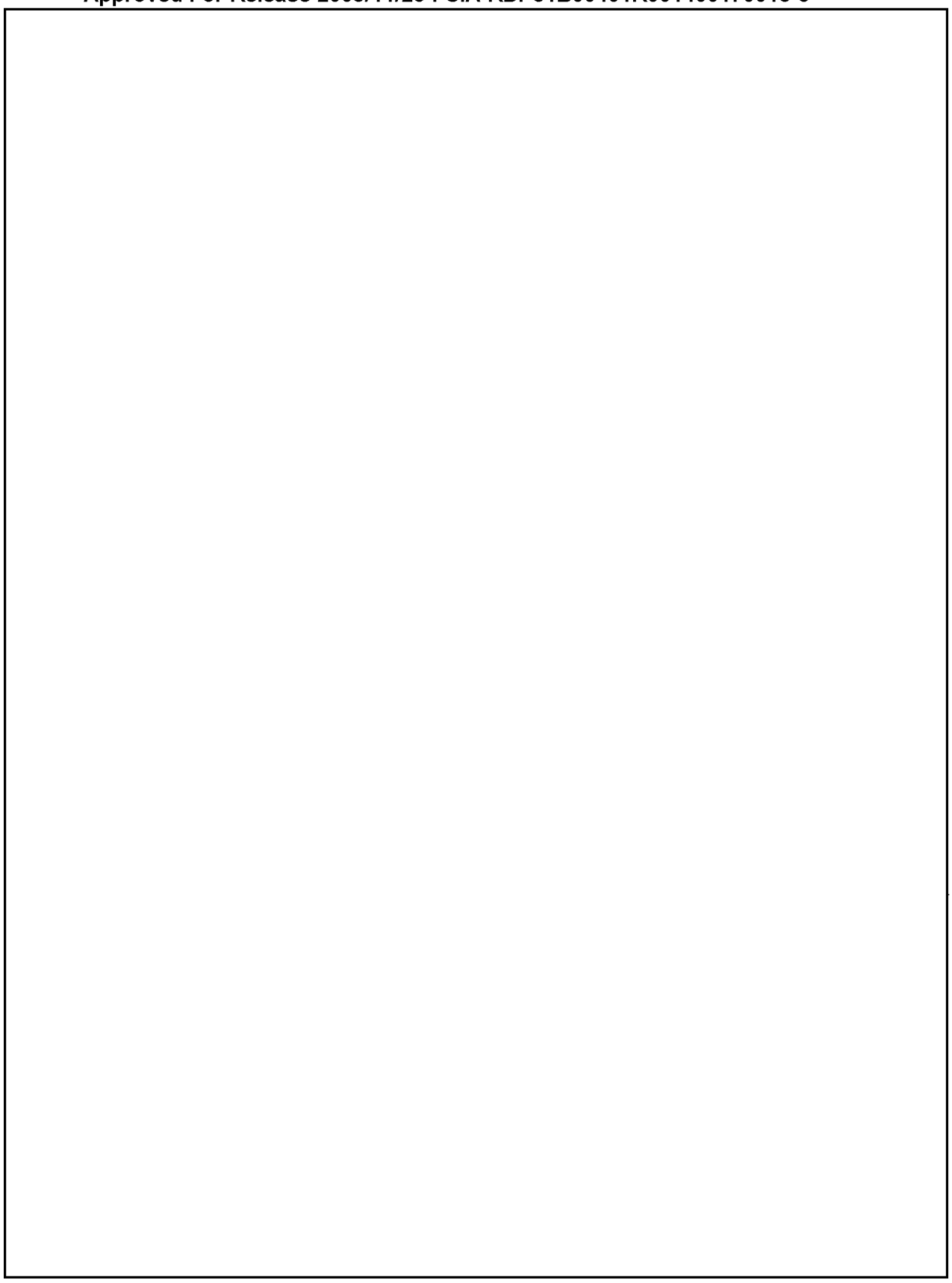
5X1

*It should be noted throughout this paper that the procedures referred to are those developed under E.O. 11905 which have been continued in force by E.O. 12036 until the ongoing process of developing new procedures under E.O. 12036 is completed.

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

25X1



Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

25X1

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Next 3 Page(s) In Document Exempt

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

clandestine intelligence activities for or employed by foreign powers or are fugitives from U.S. justice with significant relations with foreign governments.

25X1

cc: Hoskinson/NSC Staff
25X1 OLC/
25X1 C/
25X1 DCI/

25X1 OGC/

Distribution:
Orig-Addressee & File OGC Subj LEGISLATION (ARC holding) n.i.
1-AAL Signer
1-ARC Signer
1-OGC Chrono

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

1/5/79

SSCI Position Paper

TITLE II SUMMARY

I. General Principles

The following principles would be established at the beginning of title II--

SSCI POSITION PAPER

A. All activities undertaken by entities of the intelligence community shall be designed and conducted so as not to limit, disrupt, or interfere with the full exercise of rights protected by the Constitution and laws of the United States.

B. No entity of the intelligence community may collect private information concerning any unconsenting U.S. person solely on the basis of the religious or political views expressed by that person or that person's exercise of any right protected by the Constitution or laws of the United States.

C. No information acquired by any entity of the intelligence community may be used or disclosed by Federal officers or employees except for lawful purposes.

D. No person, when acting on behalf of an entity of the intelligence community may-- (a) participate in unlawful acts of violence; (b) use unlawful means to obtain information; (c) initiate a plan to commit unlawful acts; or (d) participate in any other unlawful activity, except insofar as the entity head or a designee determines under procedures approved by the Attorney General that such participation is necessary for lawful purposes.

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

II. Procedural Requirements

A. Approval of Procedures

All collection of private (i.e., non-publicly available) information from or concerning U.S. persons, or other persons within the United States, without their consent would be governed by procedures approved by the Attorney General, except that--

(a) procedures for collection directed against members of the Armed Forces would be approved jointly by the Secretary of Defense and the Attorney General;

(b) procedures for collection directed against entity employees would be approved jointly by the entity head and the Attorney General.

The Attorney General would evaluate the procedures regularly to determine whether they adequately meet the requirements of this title, and make such recommendations for changes therein as may be necessary to meet those requirements.

B. Basic Requirements

The procedures would-- (a) ensure that the least intrusive means are used that will acquire information of the nature, reliability, and timeliness that is required; (b) designate officials who may approve collection and the use of particular techniques; and (c) include any other requirements needed to protect constitutional rights and privacy and limit the use of information to lawful governmental purposes.

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

C. Reporting of Procedures

The procedures and any changes thereto would be reported to the Intelligence Committees at least sixty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such procedures and the reason for their becoming effective immediately.

D. Duration and Review

Initiation of collection of private information from or concerning any unconsenting U.S. person would require written approval by a designated official, valid for not more than six months and based on a finding that such collection is permitted under this title. Collection that continues beyond six months would require written approval every six months by the entity head or a designee, based on a finding that specific facts and circumstances justify continuation. Collection that continues beyond a year would be reviewed annually by the Attorney General or a designee (except for entity employees and members of the Armed Forces).

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

III. Standards for Collection

A. Counterintelligence and Counterterrorism Intelligence

1. Basic standards. There would be separate standards for collection against U.S. persons in the United States and abroad. A criminal standard would be required in the United States unless the person knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power and contrary to the interests of the United States. There would be a non-criminal standard abroad covering any person who knowingly acts outside the United States for or on behalf of an intelligence or security service of a foreign power. The international terrorism standard would cover activities for or on behalf of foreign-based groups. (Domestic-based groups engaged in international terrorism would be included in the FBI law enforcement charter.)

2. Recruitment subjects. Collection would be limited to subjects of recruitment efforts to engage in activities that meet the basic standards (above). Mail covers, confidential records, and continuing covert participation in U.S. organizations could not be used under this standard.

3. Targets. Collection would be limited to targets of clandestine intelligence gathering activities, international terrorism, or foreign assassination attempts. Consent would be required unless a designated official determines that (a) obtaining consent would jeopardize specific

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

classified sources or methods, or (b) there is a reasonable possibility that the person may be cooperating in clandestine intelligence gathering or international terrorism. Mail covers, access to confidential records, and continuing covert participation in U.S. organizations could not be used under this standard.

B. Potential Sources

Consent would be required unless a designated official determines that obtaining consent would jeopardize specific classified sources or methods or the security of a specific intelligence activity. Mail covers, access to confidential records, and continuing covert participation in U.S. organizations could not be used under this standard.

C. Foreign Intelligence

1. Prohibition. An entity may collect foreign intelligence from or concerning any U.S. person only--(a) with that person's consent; (b) from publicly available sources or persons who volunteer such information; (c) if the information does not identify the person and is not collected from that person, directly or indirectly; (d) if the person is the subject of collection under the basic counterintelligence and counterterrorism intelligence standards; or (e) under a Presidential waiver (see below).

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

2. Presidential waiver. The President may authorize the Attorney General to approve specific procedures for such collection if the President makes a written determination that-- (a) the proposed collection is necessary and proper to obtain information concerning foreign powers, organizations, or persons that is in the possession or or requires identification of U.S. persons; (b) the type of information to be collected is vital to the conduct of the foreign relations or the protection of the national security of the United States; and (c) other means are not available to acquire information of the nature, reliability, and timeliness that is required.

3. Limits on the waiver. An entity may collect such intelligence under a Presidential waiver only--

(a) outside the United States, if the Director of National Intelligence approves such collection based on a written finding that specific facts and circumstances indicate that information in the possession of or requiring the identification of the person is the type authorized to be collected;

(b) if the entity head or a designee approves such collection based on a written finding that the subject is an entity directed and controlled by a foreign power; or

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3

(c) if the information is obtained from cooperating sources to whom it has been disclosed previously and voluntarily.

No entity may collect such intelligence within the United States unless expressly authorized by statute to do so.

4. Procedures under the waiver. The procedures approved by the Attorney General must be reasonably designed to minimize the acquisition, retention, and dissemination of information that concerns religious or political views expressed by U.S. persons or their exercise of rights protected by the Constitution and laws of the United States. Other information identifying a U.S. person may be retained and disseminated only if it is the type authorized to be collected and that person's identity is necessary to understand such information or assess its importance.

5. Reporting. The Presidential waiver and the procedures approved thereunder would be reported in advance to the Intelligence Committees. On a quarterly basis the Director of National Intelligence would fully inform the committees concerning any collection approved by him under the waiver.

D. Security Investigations

1. Employees. There would be broad authority to collect information concerning entity employees, contractors, and employees of contractors knowingly employed on the contract with the entity.

Approved For Release 2005/11/23 : CIA-RDP81B00401R001400170018-3